

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on August 24, 2023
Sacramento, California
West Covina, California
Zoom Platform

Present:

Ed Lowry, Public Member, Chair
Judith Freyman, Management Member
Marvin Kropke, Labor Member
Patricia Hapgood, Acting Executive Officer
Sam Lucas, Presiding Administrative Law Judge
Aaron Jackson, Staff Attorney
Elizabeth Clarke, Staff Attorney
Vincent Mersich, Staff Attorney
Christopher Jessup, Administrative Law Judge
Meghan Zapata, Staff Services Manager
Janis Jonas, Executive Secretary
Denise Cardosa, Assistant Chief Counsel, DOSH
Marlene Harris, OSHAB Office Technician
Cynthia Perez, Staff Attorney, DOSH
Sesilya Saraydarian, Staff Attorney, DOSH

Minutes of August 10, 2023, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the August 10, 2023, Board meeting.
Moved: Marvin Kropke
Seconded: Judith Freyman
The vote was 3-0

New Business:

(The appeals Board hears and discusses new reports presented by staff.)

1. Discuss process for purging of files in OASIS.

Action: A task force was formed to research the retention process for documents. Vincent Mersich volunteered to take the lead for this team.

2. West Covina Board Meeting Discussion.

Action: The date for the meeting in West Covina will be rescheduled for some time during the 1st quarter of 2024.

3. Review stakeholder comments from June 27, 2023, roundtable discussion.

Action: The Board discussed the memo regarding the stakeholder's roundtable discussion. The memo will be redistributed, and this item will be held for the next Board meeting.

4. Discuss Cal/OSHA Reporter's request for OASIS access for all cases.

Action: The Board discussed the topic of access to OASIS and documents within cases. The discussion will be continued and the Board would like to receive more clarity on what the reporter is wanting to receive.

Old Business:

(The appeals Board hears and/or discusses matters on a follow-up basis.)

1. Update of DOSH LEGEND system interfacing with OASIS.

Action: Cynthia Perez reported that the LEGEND program is working well with minor issues needing correction.

2. Discussion of precedential index.

Action: No report.

3. Discuss creation of an appeals advisor for cited employers to help them avoid dismissals on technicalities.

Action: Meghan Zapata updated the Board on the progress of updating the appeal initiation process.

Legislation:

(Review and discuss current legislation which may affect the appeals Board.)

Action: Elizabeth Clarke updated the Board on current legislation.

Chairperson's Report:

(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)

Action: Ed Lowry reported on an article in the Cal/OSHA Reporter regarding fall protection.

Board Members Reports:

(Hear reports from Board members on activities and issues affecting the Appeals Board.)

Action: Judith Freyman discussed current cases regarding ergonomics.

Executive Officer's Report:

(Report regarding administrative matters.)

Action: Patricia Hapgood reported that the Attorney III position was reposted. September 21, 2023, is final file date.

The Sacramento Senior Legal Typist position has also been reposted. Final file date is August 25, 2023.

Ms. Hapgood is working on a way to remediate and post decisions on the website.

Staff Reports:

(Reports from the Supervising ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)

1. Discuss whether there are any proposals for new regulations or proposals for modifications to current regulations. In addition, discuss whether any concerns exist regarding regulations.

Action: No report.

2. Discuss status of Video Hearings.

Action: No report.

3. Discuss recent appeals filed related to the current COVID-19 pandemic.

Action: Sam Lucas updated the Board on the Appeals with COVID related citations.

4. Litigation update:

Action: Vincent Mersich updated the Board on current court cases.

Any matter not completed at this meeting may be continued to subsequent meetings. If the closed session agenda is not completed on the scheduled day, the closed session will continue from day to day until completion and adjournment.

Public Comment:

(Public comments will be entertained during discussion of each agenda item of the open meeting.)

Action: Public comments were received.

The Board recessed to its closed session.

Decisions of Administrative Law Judges:

(Written decision issued by an Administrative Law Judge. The Decision summarizes the evidence received from the Division of Occupational Safety & Health and the Employer, makes findings of fact for all issues involved in the appeal and gives reasons and grounds for the Decision. The board members review the Decision and decide if they will reconsider the ALJ Decision on their own motion.)

1491229 Davis Development Company, Inc.
Action: The Board discussed this decision.

1462230 Intelligent Technologies and Services, Inc.
Action: The Board discussed this decision.

Petitions for Reconsideration:

(The Division of Occupational Safety & Health and the Employer each have the right to petition the Appeals Board to reconsider a decision or order of an Administrative Law Judge. The Appeals Board must decide to grant or deny each petition.)

1467390 Hunt Buildingworks, Inc.
Action: The Board voted to issue a remand for this case.
Moved: Marvin Kropke.
Second: Judith Freyman.
Vote: 3-0

1571270 Partnership Staffing Solutions, LLC
Action: The Board voted to issue a denial in this matter.
Moved: Marvin Kropke.
Second: Judith Freyman.
Vote: 3-0

Orders Dismissing Appeal:

1623373 Haliburton International Foods, Inc.
Action: The Board discussed this order.

1570729 Pinnacle Staffing Solutions, Inc.
Action: The Board discussed this order.

Orders Denying Leave To File Late Appeal:

1573866 Bodega Latina Corporation
Action: The Board discussed this matter.

1608158 Tesla, Inc.
Action: The Board discussed this matter.

Matters Pending Reconsideration:

(If the Appeals Board orders reconsideration of an Order or Decision, it reviews the record and then affirms, rescinds, alters, or amends the Order or Decision being reconsidered.)

The following list is intended to inform stakeholders and members of the public of what the Board believes is the issue of most interest to the general public presented in each of the following matters. The issues are listed so as to assist those interested in research or public information, and not litigation, and are not necessarily or exclusively the only issue or issues presented in each matter. The issues identified are not positions of the Board. Further, the Board may add and decide issues not included in the list or decide the matter on other grounds, under authority of Labor Code sections 6620 through 6623.

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| 1314092 | 99 Cents Only Store, LLC
<i>Whether the employer committed a foot protection violation as alleged.</i> |
| 1431672 | A. Teichert & Son, LLC
<i>Whether the cited employer was in violation of lockout/tagout requirements.</i> |
| 1473644 | Amazon.com Services, LLC
<i>Whether the employer's training program was in compliance with the applicable safety order.</i> |
| 1113026 | Angelus Block Co., Inc.
<i>Whether Employer violated lock out/tag out requirements as alleged.</i> |
| 1564732 | Calvary Chapel of San Jose dba Calvary Chapel Academy
<i>Whether the ALJ correctly excluded evidence from the inspection.</i> |
| 1490008 | Elite MD, Inc.
<i>Whether the ALJ's denial of leave to file a late appeal was correct.</i> |
| 1488312 | The Indiana Finish Line, Inc.
<i>Whether the cited employer established procedures adequate to protect employees from COVID-19.</i> |
| 1436480 | Interline Brands, Inc.
<i>Whether the employer violated foot protection standards.</i> |
| 1486257 | The Kroger Company
<i>Whether the cited employer adequately trained employees regarding workplace hazards.</i> |

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- 1340591 Lennar Corporation
Whether Employer committed the violations alleged.
- 1465354 Natural Alternatives International, Inc.
Whether the ALJ erred in dismissing the matter.
- 1405107 S.C. Anderson, Inc.
Whether employer committed the alleged violations.
- 1652414 See's Candies, Inc.
Whether Employer established good cause for the late appeal.
- 1291481 Sierra Pacific Forest Products
Whether Employer was in compliance with the cited safety order.
- 1303461 SSA Terminals (Oakland), LLC DBA SSA Marine Terminals
Whether Employer violated section 3212(a)(2)(A) as alleged.
Action: The Board discussed this matter.
- 1594663 Uber Technologies, Inc.
How Proposition 22 interacts with the Board's statutes and operative regulations

Matters Pending Litigation:

(If the Division of Occupational Safety & Health or the Employer disagrees with a Decision after Reconsideration or a Denial of a Petition for Reconsideration, either one or both parties may apply to the California Superior Court for a Writ of Mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)

Superior Court:

1. Ashley Furniture Industries, 34-2017-800002750 (1016514)
2. United Parcel Service, Inc. DBA UPS, 34-2019-80003174 (1116529)
3. Davis Development Company, 34-2020-80003373 (1226084)
4. Southern California Edison, 34-2021-80003580 (1320327)
5. Hill Crane Service Inc., 34-2021-80003744 (1135350)
6. USA Waste of California, Inc., 34-2022-80003841 (1384029)
7. Ranch of the Golden Hawk, 22STCP02302 (1224802)
8. Guy F. Atkinson Construction, LLC. 22STCP03019 (1332867)
9. American Fumigation Services, LLC, 22STCP04305 (1506586)

Appellate Court:

1. Interline Brands, Inc., CIVDS2021813 (1251604)
2. L & S Framing, Inc. S-CV-0046603 (1173183)
3. Granite Construction Company, 34-2021-80003634 (1235643)
4. MWL Solutions, C097353, 34-2020-80003549 (1436014)
5. BMC West LLC, 34-2020-80003459 (1399613)
6. Hampton Tedder Electric, 34-2020-80003549 (1233597)
7. RND Contractors, Inc., CIVSB2119442 (1436785)

Other Items:

1. New and/or interlocutory petitions for reconsideration not filed in time to be agendized.
Action: No report.
2. Categorizing the Board's DARs and Denials on the DIR website.
Action: No report.
3. Staff attorneys to provide legal analysis, advice and counsel regarding COVID-19 cases.
Action: No report.
4. Discussion of DOSH Proposal to have their eAttorney system interface with OASIS.
Action: No report.

Orders Of Administrative Law Judges:

(Written order issued by an Administrative Law Judge after a pre-hearing conference in which the Division of Occupational Safety & Health and the Employer agree to settle an appeal without a hearing. The Board Members review the Order and decide if they will reconsider or remand the issued order.)

1633718	A + Demo, Inc.
1597841	Ashby Lumber Company
1495759	Austin Commercial, L.P.
1670193	Bellisi Design Inc.

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1528657	Bill Morris Contracting, Inc.
1652804	BJ's Restaurants, Inc.
1597862	Bumble Bee Foods, LLC
1480867	CA Dept of State Hospitals/Patton State Hospital
1510928	CA State Hospitals (DSH) Atascadero
1629883	California Department of State Hospitals
1580917	Caloy Company LP
1657934	Centimark Corporation
1460643	City of San Diego Engineering & Capital Projects
1625109	Clebae Infinique Tooling and Molding, LLC
1642631	Desert Truck Service Inc.
1642939	Diamond Horses, Inc.
1628716	Giuliano's Delicatessen, Inc.
1633360	Good Eggs, Inc.
1677688	Haven-Electric Inc.
1474075	J Ginger Masonry
1661228	Jimmy's Mowing & Tractor Services
1599477	La Deau Manufacturing Company
1628161	Loewy Enterprises
1672339	Mast Roofing, Inc.
1540513	Memo's Farm Labor Services, Inc.
1617765	Neil's Controlled Blasting, L.P.
1635760	One Source Plumbing & Rooter, Inc.
1593347	Partners Personnel - Management Services, LLC
1577522	Productions Plus, Inc.
1671765	Regional Roofing Inc.
1624649	Robert Whitaker Drywall
1674866	Scott English Plumbing Inc.
1489489	Southern California Discount Tire Co., Inc.
1599815	Stater Bros. Market
1634176	Steve Wills Trucking and Logging, LLC
1604054	Stone Tree, Inc.
1507367	Suburban Motors, Inc.
1624392	Sweetwater Authority
1626982	T.D. Angels, Inc.
1640511	Tesla, Inc.
1664522	The Mcalear Group, Inc.
1660554	Thrifty Payless, Inc.
1593656	Tony Cox and Family Dairy

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1549562	Tri-County Drilling, Inc.
1657279	Unger Renovations, Inc.
1573733	United Markets
1458353	United Parcel Service, Inc
1613411	United Pharma, LLC
1649984	United States Cold Storage of California
1664858	Voorwood Company
1616921	Wes-Tec, Inc.
1616934	Western Scrap, Inc.

Action: The Board discussed the Settlement Orders issued by the Administrative Law Judges.

Personnel:

(Issues regarding staff)

Action: No report.

The Closed Session adjourned at 12:24 p.m. and the Board returned to the Public Meeting. The Appeals Board incorporated by reference its actions in the Closed Session, as indicated above. The Board meeting was adjourned at 12:26 p.m.